

Learners' Obstacles in the Translation of Legal Texts Between English and Vietnamese

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Abstract

Legal translation, also defined as the rendering of legal texts from the source language (SL) into the target language (Cao, 2007), is deemed as one of the most rigorous translation fields due to the distinctive, culture-specific and culture-sensitive features of legal language in different law areas (Alcaraz & Hughes, 2014). Undeniably, such wide divergence has imposed great difficulties on learners and practitioners, which attracted attention from educators and scholars for the last decade. Yet, there still exists a limited number of research on this issue. Thus, the focal aim of the present paper is to seek relevant major factors of English-majoried learners' obstacles in the process of translating legal texts between English and Vietnamese at Hanoi Law University. A mixed-method study with the utilization of survey-questionnaires, semi-structured interviews and classroom observation was employed to collect data. The results revealed the main challenges concerning linguistic aspects of legal English language, the non-equivalent legal systems and cultures, and the students' legal background knowledge. Such findings are expected to be beneficial for both teachers and learners when it comes to learning and teaching legal translation.

1. INTRODUCTION

In the globalized context where international relations are much more than ever, legal translation has played a growing important role (Gotti & Šarčević, 2006). Legal translation, defined by Cao (2007) as transferring legal texts from the source language (SL) into the target language (TL), is a not straight-forward affair and no easy task at all. Rotman (1995, 1996) states that legal translation requires precision and clarity as errors can lead to legal consequences (Muriçi, 2016). It is undeniable that legal translation is a necessary skill as well as a potential profession for graduates. Therefore, it is crucial to incorporate legal translation as a core subject into a law school training program.

Legal translation is one of the most challenging areas due to its peculiar features. Legal translation demands expertise in law fields, the language proficiency, and special skills on the part of the translator (Al-Tameemi & Farhan, 2016). Accordingly, both novice and experienced translators find it difficult to translate legal texts characterized by their specific legal system and legal cultures. Obenau (1995, p.249) emphasizes the relationship between law and culture under which legal documents are “pregnant with it”. Hindrances may arise from either

linguistic constraints, or cultural and legal differences, which have revealed in the findings of the previous studies of several scholars (Aušra, 2014; Camelia, 2014; Karjo, 2015; Kobyakova & Habenko, 2017; Ma & Nguyen, 2019; Muriçi, 2016; Sofyan & Rosa, 2021).

Legal translation is a core, yet challenging subject in the legal English major training program at Hanoi University of Law. A variety of learners' obstacles has been noticed in the process of legal text translation between English and Vietnamese. Although legal translation teaching and learning has attracted a huge attention among scholars and educators, there lacks research on obstacles in the legal translation in the context of legal translation course at a higher institution in Vietnam.

For all those reasons, this paper is conducted to contribute to the common knowledge of learners' challenges in translation of legal texts between English and Vietnamese at Hanoi Law University as well as to narrow the research gaps in this area.

2. LITERATURE REVIEW

2.1. Legal Texts

Legal text is defined as any document used in a legal system and drafted in accordance with the applicable laws of a country (Felder, 2018). Legal texts include a wide range of documents depending on the services and the needs they serve. Some of the most popular ones cover different types, for example, certificates (marriage, birth, etc.), wills, contracts, testaments, affidavits, or legislation in the form of decrees, laws, constitutions, etc.,

2.1.1. Main features of legal texts

Writing conventions

There is a number of factors constituting the writing conventions of legal texts. In the first sense, the structures of sentence are peculiar with the use of long and complex sentences. Karjo (2015) states that long sentences might avoid repetition, simultaneously, make clear the logical links between ideas. Clearly, in one lengthy sentence, several clauses are joined together with commas or the coordinators “and/or/but” creating the incomprehensibility or additional ambiguity.

Moreover, legal texts uses the distinctive features of languages that makes readers find them difficult to construe the meaning. In English legal texts, borrowed terms (i.e., *de facto* (the fact)/trên thực tế; *ad hoc* (for this purpose)/vì mục đích cụ thể; *inter alia* (among other things)/bên cạnh các điểm khác; etc.; archaic words (i.e., “hereof”, “thereof”, and “whereof”); unusual pronouns (i.e., the aforesaid; the same); unusual set of phrases (i.e., null and void; all and sundry) are employed instead of common expressions (Haigh, 2009) leaving the translators feeling confused during the comprehension and translation process between English and Vietnamese. Another feature of the legal text writing styles includes the usage of modal verb “*shall*”. In ordinary English, “*shall*” often refers to or indicates the future. Nevertheless, in legal usage, the verb “*shall*” is considered to be a vague word as it expresses more than one meaning, either the meaning of the obligation or future action/ states. Thus when understanding and translating legal texts, the translators have to consider the context to convey the exact meaning of “*shall*”, which is no easy task.

Specialized language

A legal text requires a range of vocabulary conveying precise meaning of the type of information. Accordingly, language used in the legal text not only corresponds to the area, but also needs absolute accuracy. In this way, it is characterized by handling a very specialized language comprising of specific legal terminology following the respective law areas. Legal

terminology refers to legal terms of art (i.e., bailment, abatement), legal jargons (i.e., boilerplate clause, corporate veil) or the phrase/ word with legal meaning different from the general meaning (i.e., consideration, construction) which are impossible to be replaced by others, or difficult for non-lawyers to understand (Haigh, 2009).

2.2.Previous studies on challenges in legal translation

Obviously, while legal texts include a certain degree of ambiguity as a consequence of the distinction in legal cultures and system between countries, legal translation requires absolute accuracy. The translators' responsibility is to reconstruct the structure and meaning of the source text (ST) as closely as possible as Sarcevic (1997) states that "literal translation (the stricter the better) was the golden rule for legal texts" (p.127). Legal translation, nevertheless, is not merely the translation of a written text from one language into another, yet a transfer of legal aspects from ST to target text (TT) in which it might not be found. Therefore, translators of legal texts, come across several hindrances which have been found out in previous research in the literature

Aušra (2014) conducted a study with the participation of 66 ESP students to work out the difficulties in the legal text translation process between English and Lithuanian. The statistics noted that learners committed errors in choosing the appropriate legal expressions and legal terms ranging from the middle to the high rate. From such findings, the study proposed several useful pedagogical recommendations helping students overcome all types of translation difficulties, including grammatical, semantic, cultural, lexical, etc.,

One year later, Karjo (2015) carried out a study in order to clarify several obstacles encountered by Indonesian students when translating legal texts. Thirty students of English Department from Bina Nusantara University who were currently taking legal translation subject as a compulsory course partook in the study. The participants were required to translate a 200-word legal text from English into Indonesian of which the translation of ten legal terms was chosen to analyze. The findings indicated the challenges relating to distinctive features of legal English in the process of legal translation, thereby several translation strategies were proposed to deal with the aforementioned problems.

Ali (2016) investigated Sudanese legal translation practitioners' perceptions about the challenges in translation of legal contracts. To answer the five research questions, thirty-three Sudanese translation practitioners were invited to answer the survey questionnaires, the finding of which ascertained that the easily noticed problems arose from language proficiency, followed by writing conventions, and culture-specific ones. In addition, the respondents believed that these obstacles had negative effect on the quality of their translation for the reason that excessive time was spent on finding equivalent words while failing to transfer the whole meaning of the text. The result of the study also proposed some recommendations in terms of regular training and solid legal background knowledge to overcome such problems.

A study, conducted by Al Buwaheid, Hamza, Hajimmaming, and AlKhawaja (2017), clarified the students' strengths and weaknesses in the translation of collocations in the contract from Arabic into English. The results revealed that these students met obstacles when translating legal collocations owing to their poor linguistic and pragmatic knowledge of the translated texts.

Sofyan and Rosa (2021) examined 15 translated legal texts documented to identify problems encountered by semi-professional translators in Indonesia. The findings revealed the obstacles relating to the incapability of finding equivalent legal English terminology, the translators' lack of the English legal language and the incomprehension of the source texts.

Such challenges require different strategies to ease the process of legal translation. Clearly, it implies that it is necessary for a translator to acquire adequate knowledge of the laws and language of both the SL and TL.

In the context of Vietnam, Ma & Nguyen (2019) detected three main factors in the process of legal terminology translation, namely difference in the legal systems and laws, linguistic difficulties, and cultural problems. Specific examples of challenges in each context were clearly identified. The study also implicated an action plan to deal with such challenges with the principles of comparative law, translation strategies and Deborah Cao's three-dimension model for legal English teachers

3. METHOD

3.1. Participants and settings

196 legal English-majored juniors and seniors at a University of Law in Viet Nam, who have gone through compulsory legal translation courses, participated in the survey. Additionally, the participants shared similar characteristics, in which they completed legal English courses. However, it is noted that the participants are deemed not to acquire adequate knowledge of legal knowledge since law is not their major in the training program.

3.2. Data collection instrument

Survey questionnaires were utilized to collect the data to clarify the learners' perspectives on the obstacles in the translating process of legal texts between English and Vietnamese. The questionnaires consisted of two open-ended questions plus twenty-one statements on a 5-point Likert assessment scale to indicate (1) strongly disagree, (2) disagree, (3) neutral, (4) agree, (5) strongly agree. To clarify the participants' views, semi-structured interviews were added. Moreover, classroom observation was used as a supplementary instrument to observe learners' errors/ challenges in the process of legal translation in real-practice classes.

3.3. Data collection and data analysis procedures

The survey was carried out during the period of the second half of April in the academic year 2022-2023. The participants were administered the questionnaires via their email addresses. The data was then accumulated, coded, and analysed quantitatively using SPSS software. The Mean value of each item is interpreted as follows: (1.0 - 1.79) very low, (1.8 - 2.59) low, (2.6 - 3.39) medium, (3.4 - 4.19) high, and (4.2 - 5.0) very high.

The in-depth interview was carried out face-to-face with the participation of eight learners randomly chosen from the participants. The qualitative data was examined to support the interpretation of the statistics collected from the questionnaire in the forms of quotes or sayings.

Classroom observations were conducted in four weeks from early March to early April, 2023. In each translation lesson, learners were assigned translation tasks. After the time allowed, they were required to show their translation for teachers and peers to evaluate. Because of this activity, it was suitable for the researcher to observe and obtain target data.

Specifically, three sessions of legal translation courses were observed with the colleagues' prior consent. To minimize bias, the researchers acted as non-participation observers to take note of learners' errors/ obstacles so as not to influence or interfere with participants and the activities under observations. Also, as a lecturer of translation practice, the researcher did the note-takings of her learners' errors during her teaching sessions. Learners' errors/ obstacles were classified according to different factors, including linguistic constraints, different legal systems and cultures, and legal background knowledge.

4. RESULTS AND DISCUSSION

4.1. Learners' perspectives on the necessity of the translation of legal texts

Before clarifying learners' obstacles in the translation of legal texts between English and Vietnamese, the majority of the surveyed students (87%) viewed its necessity in their future career. Such views were affirmed in the followed-up interview.

I believe that being able to comprehend and translate legal texts between English and Vietnamese is very beneficial in the world of integration, especially for the ones who specialize in legal fields (L.G).

In the context of globalization, the capability to accurately render legal documents from one language to another proves to be of great importance as a minor mistake could lead to a serious misunderstanding (T.L).

4.2. Obstacles in the translation of legal texts between English and Vietnamese

Table 1. Obstacles in the translation of legal texts between English and Vietnamese

	Statements	N	Mean	SD
1.	I find it challenging to precisely and fully understand the meaning of the ST and then transfer it to the TT with the maximum meaning transmission. (Transference competence)	196	3.97	.826
Linguistic constraints (Features of Legal English and writing style)				
2.	The use of archaic words and phrases (i.e., thereof, whereof, hereto , etc.) in the legal texts causes me great difficulty in the translation between English and Vietnamese.	196	3.92	.452
3.	Understanding borrowed (Latin/ French) terms (bona fide, casus fortuitous, etc.) in legal documents is not an easy task in the translation process.	196	4.01	.637
4.	Interpreting the correct meaning of the ambiguous words/ phrase, e.g., modal verb “ shall ” in legal documents is extremely challenging.	196	4.33	.898
5.	Long and complex sentences in legal texts are difficult to translate between English and Vietnamese.	196	4.25	.765
6.	I am confused when translating several common words with uncommon meaning (consideration, agreement, redemption , etc.,) in legal texts.	196	3.02	.851
7.	Passive structure usage in legal texts makes it difficult to render its meaning between English and Vietnamese.	196	2.61	.754
8.	I find it difficult to translate the legal texts due to the ambiguity of the order of the words between the SL and TL.	196	3.43	.712
9.	The use of impersonal style makes legal texts much more difficult to be rendered between SL and TL.	196	3.52	.825
10.	I find it difficult to organize my ideas logically during translation process.	196	3.23	.864
11.	I am unable to effectively finish the translation tasks because of my weak grammar.	196	2.34	.932
12.	I usually meet difficulties in finding the suitable Vietnamese expression when translating English legal texts.	196	3.55	.783

13.	I usually meet difficulties in finding the suitable English expression when translating Vietnamese legal texts	196	3.67	.827
14.	I find it difficult to translate different legal text types between English and Vietnamese as they require different ways of expression (textual competence)	196	3.02	.438
Differences in legal systems and legal culture				
15.	The differences in legal systems and legal cultures are problematic in the translation process of legal texts between English and Vietnamese.	196	4.25	.857
16.	I find it challenging to translate legal terms between English and Vietnamese that are system-bound (i.e., prosecutor ; tort law ; estoppel , etc.,).	196	4.06	.612
17.	The non-equivalence between English and Vietnamese legal terms makes it difficult to translate.	196	4.01	.724
18.	Highly specialized legal concept of English and Vietnamese legal system brings obstacles in interpreting the meaning from the SL to TL.	196	3.97	.837
19.	Cultural-related issue is an outstanding challenge in the translation process between Vietnamese and English legal texts.	196	4.19	.605
Legal background knowledge (subject competence)				
20.	I find it difficult to render the legal texts between English and Vietnamese due to my lack of legal background knowledge	196	4.05	.561
21.	I find it difficult to render the legal texts between English and Vietnamese because English law and Vietnamese law is different	196	3.96	.782

N.B: (1.0 - 1.79) very low, (1.8 - 2.59) low, (2.6 - 3.39) medium, (3.4 - 4.19) high, and (4.2 - 5.0) very high.

Table 1. shows the rate of the respondents' agreement on different factors contributing to the obstacles in the translation of legal texts between English and Vietnamese. Overall, the majority of the factors causes great difficulties in the translation process.

In terms of linguistic constraints, the result displays that distinctive features of legal English and legal writing style were considered to be challenging for learners when translating legal texts between English and Vietnamese, with the remarkable mean scores, differing from 3.62 to 4.33). Specifically, learners strongly agreed the use of ambiguous phrases (i.e., the verb "shall") and long, complex sentences were the biggest problems in the translation process ($M=4.33$, $SD=.898$; $M=4.25$; $SD=.898$, respectively). Latin terms, and archaic words stood on the next ranks of complicating translation process ($M=4.01$, $SD=.637$; $M=3.92$; $SD=.452$). Following this trend, the use of impersonal style, along with the ambiguous order of the SL and TL received strong agreement among the participants in creating the translation problems ($M=3.52$, $SD=.825$; $M=3.43$, $SD=.712$). However, students showed their neutral standpoint when indicating that the use of passive structures, requirements of different ways of expression along with common words with uncommon meaning in legal texts posed a challenge for their translation process with the mean score of 3.02 and 2.61, correspondingly. These figures can be asserted in the follow-up interviews.

The complex and lengthy sentences in legal texts present me significant obstacles to translate between English and Vietnamese. Usually, I do not know how to put ideas logically and transparently in TL (L.A).

I find it extremely challenging when identifying the meaning of the modal verb “shall” in legal texts. When rendering it in Vietnamese, “shall” expresses either the future or the obligations, which is confusing. (T.L).

Translating legal documents with Latin words (Ad hoc, pro se, de facto, etc.) is problematic. Sometimes, I have to read several explanations and examples to clarify such meanings in TL (M.H)

Such findings are in line with Gotti (2016), Santos (2018), Sofyan & Rosa (2021), Zanettin (2014). Specifically, Sofyan & Rosa (2017) pointed out legal language including archaic terms, borrowed words (i.e., Latin terms, French words) that may be unfamiliar to many readers and translators pose significant obstacles to translators who lack the necessary linguistic and legal expertise to accurately convey the meaning of such terms in the TL. Therefore, it is crucial for legal translators to have a solid understanding of legal terminology to ensure accurate and effective communication in the TL (Santos, 2018). Gotti (2016) denoted that the lengthy, complex writing style of legal texts between the SL and TL may also contribute to the translator's alteration of phrase and word orders.

In the translation process, from the learners' viewpoints, grammar, and the use of passive structure is not deemed to be a hard factor with low rate of agreement ($M=2.34$, $SD=.932$; $M=2.61$; $SD=.754$). However, also a high number of the participants expressed worries about either finding suitable expressions from SL to TL or organizing the ideas logically when translating.

How to organize my ideas in a logical and coherent way is no easy task at all, especially when dealing with complex ones (H.S).

I met no major difficulties in grammar when translating from SL to TL. You know sentence structures are quite flexible in translation. But the most rigorous problem is to render the exact meaning adherence to the sense of the original text. Sometimes, I find English-Vietnamese translation tougher than Vietnamese-English translation (Q.T).

This finding is congruent with Phan (2022), who agreed that languages differ in their expressions of meaning, which poses challenges to learners in conveying the intended meaning from the ST into the TT, as well as creating logical expressions.

Regarding the distinctive features between legal systems and legal cultures of the SL and TL, the participants held strong viewpoints that such factors contributed to the difficulties in the translation process with the high mean score value of 4.25. Particularly, translating system-bound legal terms, non-equivalent terms, and highly specialized legal concepts as a challenging task experienced a high degree of agreement among the learners ($M=4.06$, $SD=.612$; $M=4.01$, $SD=.724$; $M=3.97$, $SD=.837$, respectively). It came no surprise to the researcher as Gotti (2016) claimed that a satisfactory translation of all culture-bound legal terms from SL to TL is, sometimes, inconceivable. Also, this finding is in line with Cao (2007), who reported that law is “culturally and jurisdictionally specific” to each country and legal system, which is partly explained for the students' choice relating to cultural competence barrier. Specifically, cultural competence is viewed as the most challenging factor for learners ($M=4.19$, $SD=.650$).

Such culture-related barrier emerges significantly due to the disparity in the common law and civil law legal systems as Šarčević (2000) denoted that the translation of a legal text from

one system to the other does not mean a surface translation but a more complex “legal transposition”.

*The use of two interchangeable terms for the same concept is specific to English tradition and culture e.g., **new and novel, terms and conditions, able and willing**. This phenomenon causes me some problems when translating into Vietnamese that is not so richly equipped with synonymous terms (V.T).*

Additionally, to a deeper extent, translating legal texts between English and Vietnamese requires translators and learners' sufficient legal knowledge of both SL and TL because legal concepts demonstrate the legal system where the legislation is enacted (Ma & Nguyen, 2019). Such statement is confirmed with the students' agreement on the difficulties arising from lack of legal back ground knowledge and the difference between the law of two systems (M=4.05, SD=.561; M=3.96, SD=.782)

Legal terminology in legal texts is highly specialized depending on its legal system, legal culture, which proves to be particularly challenging for me. I often struggle to find suitable equivalents in Vietnamese as well as in English, especially when there is no direct translation available. For example, the term “Miranda Warning” in the U.S, which is bound by the cultural-related history background of the Miranda case, does not exist in Vietnamese legal settings. Such term confuses me a lot (H.S)

Lack of knowledge of legal system, law and legal cultures of both SL and TL causes great troubles in translating. Let's take the word “Consideration” as an example. Under English law, “consideration”, an essential element in the formation of contract, is defined as the exchange paid by each party to a contract. In Vietnamese, “consideration” means the act of thinking about something carefully. If we do not understand the law of two countries, we cannot find the exact meaning/ expression for such terms (M.L).

Many terms are system-bound, for example, prosecutor, equity, tort law,” etc., posing a burdensome task to learners without background knowledge of the legal system or law of the US or the UK (L.A).

Therefore, it can be inferred that the lack of adequate foundation knowledge of legal issues can be a significant barrier for individuals attempting to understand and accurately translate and interpret legal settings. As pointed out by Borja-Albi (2017) without a strong understanding of legal terminology and procedures, accurately translating legal documents can be a challenging task. This sentiment is echoed by Santos (2018), who emphasizes the significance of legal terminology and context in legal translation, which is essential for students to gain a comprehensive understanding of the legal system and effectively translate legal documents and proceedings.

From the survey and interviews, students' problems have been revealed. In order to clarify their actual problems, classroom observation also illustrated several significant findings.

Table 2. Obstacles in legal-translation practice at class

Factors		L1		L2		L3		L4		Total
		Fr	%	Fr	%	Fr	%	Fr	%	
Linguistic	Features of Legal language	13	37.1%	13	38.2%	10	35.7%	11	39.3%	37.6%
	Grammar	7	20%	6	17.6%	4	14.3%	4	14.3%	16.5%

Differences between legal systems and legal cultures	8	22.9%	10	29.4%	9	32.1%	7	25%	27.4%
Subject competence	7	20%	5	14.8%	6	17.9%	6	20.4%	18.6%
Total	35	100%	34	100%	28	100%	28	100%	100%

Table 2 shows that learners encountered obstacles arising from different factors in legal translation periods. As seen, linguistics constraints were the most significant causes for learners' translation errors with the constituents of 37.6% of features of legal language. This finding is congruent with learners' perspectives in the previous part. Grammar, however, is not a serious problem when translating, which is easily understandable as the participants are English-major juniors and seniors. Differences between legal systems and legal cultures stood at the second rank of difficulty with the rate of 27.4%. Learners' subject competence was in the third place when leading to 18.6% errors in total. Such statistics were not extremely high compared to two other factors. This may be explained that the topics of translated texts were covered in legal English courses. Therefore, the number of errors relating such factors were fewer. However, there were still several cases which required learners to research in order to find the most suitable TL expression.

5. RECOMMENDATIONS AND CONCLUSION

Considering the findings, it can be concluded that learners face several difficulties when translating between English and Vietnamese. These challenges can be categorized into three main groups: Linguistic constraints, difference between legal systems and cultures, and subject competence (legal background knowledge). Specifically, the majority of obstacles arises from linguistics features shown by learners' failure to provide the precise technical equivalents from the SL to TL. Furthermore, learners lack professionalism in translating legal texts due to the disparity in legal systems, cultures and competence in rendering the meaning of SL into TL. On the grounds of the above results, a number of recommendations are made in order to help them cope with their problems.

The difficulties relating to legal language aspects, first and foremost, could be handled by equipping learners with the sufficient knowledge of legal English and legal drafting traditions. To lessen the complexity of the translation of legal terminology, it is necessary for learners and translators to be aware of the legal systems of both SL and TL. In other words, the practice of legal translation does not only mean a surface- transference of the meaning and style but also a legal concept from SL into TL. Accordingly, the knowledge of comparative law is of great necessity, attracting learners' interests.

Secondly, in order to produce the standard translation version of legal documents from English into Vietnamese, the translation learners are required to have sufficient background knowledge in legal fields. Therefore, it is advisory for them to improve the knowledge of law as much as possible. Preferentially, legal English students who expect to work as translators in legal areas should master in law besides languages.

In addition, applying translation strategies proves to be of great necessity in enhancing learners' translation competence. Translation strategies includes the application of either literal translation, functional equivalence or borrowing, descriptive equivalence and coining a new term depending on each respective context. Literal translation, a golden rule in statutory interpretation (Cao, 2007), is a first-and-foremost important strategy in legal translation. However, the legal concepts of different jurisdictions are rarely exactly the same (Cao, 2007), thus, in certain contexts, borrowing technique, proves to be a worthy one. Descriptive

translation is also adopted when providing description of SL into TL as in the case of the term “tort law” from English into Vietnamese. Lastly, creating a new term is a notable technique to be applied if all the aforementioned strategies have been applied (Ma & Nguyen, 2019).

The study provides with notable findings, yet, due to time constraint, the study is not without limitations. The limitation concerns the small scale in which the study was only carried out in the context of Hanoi Law University with the participation of legal English major juniors and seniors. Consequently, it is hard to generalize its findings to other participants. In other words, the results cannot reflect the behavior of a larger population. Moreover, translation error types were not fully investigated. Therefore, for a detailed insight, further research should be conducted to fill in the research gaps.

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